

	Council Vacancy Policy (Approved by Council on October 16, 2012)	
	Policy Category: Governance	
	Policy No.:	Implementing Procedure No.:
Approving Authority: Council		Effective Date:
Approved or Last Reviewed Date:		Next Review Year:
Area(s) this policy applies to: Markham Council		Owner Department: Legislative Services
Related Policy(ies):		

Note: Questions about this policy should be directed to the Owner Department.

1. Purpose Statement <i>(Outline why the organization is issuing the policy and its desired effect or outcome of the policy)</i>
<p>The purpose of this policy is to provide for an accountable and transparent process for filling any Vacancy that occurs on Council.</p>
2. Applicability and Scope Statement <i>(Who and what this policy applies to and/or affects)</i>
<p>This policy applies to any Vacancy on Council during the term of Council.</p>
3. Background <i>(Indicate any reasons, history, and intent that led to the creation of the policy)</i>
<p>In accordance with the <i>Municipal Act, S.O. 2001, c.25</i>, when the seat of a Member of Council becomes Vacant, City Council is required to declare the seat vacant and determine if the seat will be filled by By-election or Appointment. A Vacancy can occur on Council in several different ways, including the death or resignation of a Member, or when a Member becomes disqualified from holding office.</p> <p>Council, to ensure an accountable and transparent process for filling any Vacancy, has directed that a policy be adopted to provide a clear understanding of the decision making process when a Vacancy occurs.</p>
4. Definitions <i>(If applicable, define any terminology or interpret meanings of a general term)</i>
<p>In this policy and any associated procedures:</p> <p>“Act” means the <i>Municipal Act, S.O. 2001, c.25</i>, as amended.</p>



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“Appointment” means the process of **Council** appointing a qualified individual to fill a **Vacancy** for the remainder of the current **Council** term.

“By-election” means an election held to fill any **Vacancy**, conducted in accordance with the provisions of Section 65 of the *Municipal Elections Act, 1996*, as amended.

“Clerk” means the City Clerk appointed by **Council** under the **Act**, or his or her designate.

“Council” means the City of Markham Council.

“Regular Election Year” means the year established for a regular municipal election in accordance with the *Municipal Elections Act, 1996*, as amended.

“Vacancy” means when a seat on **Council** is vacant in accordance with Section 259 of the **Act**, and **“Vacant”** has a corresponding meaning.

5. Policy Statements *(Detail the specific regulations, requirements, or modifications to organizational behaviour to be addressed by this policy)*

1. Principles

The City of Markham is committed to an open, accountable and transparent government. **Council**, when exercising its responsibility under the **Act** to fill a **Vacancy**, shall observe the following principles:

- 1.1 **Council** will elect to fill a **Vacancy** by **By-election** when that **By-election** can be held prior to December 31st in the year immediately preceding a **Regular Election Year**; or,
- 1.2 **Council** will elect to fill a **Vacancy** by **Appointment**, when a **By-election** to fill a **Vacancy** cannot be held prior to December 31st in the year immediately preceding a **Regular Election Year**.

2. The last day on which a Vacancy can occur for the calling of a By-election

A **By-election** to fill a **Vacancy** can be held prior to December 31st in the year immediately preceding a **Regular Election Year** only if the **Vacancy** occurs on or before March 31st in the year immediately prior to a **Regular Election Year**.

3. Alternate Appointment to the Regional Council

In accordance with Section 267(2) of the **Act**, if a **Vacancy** occurs in the office of the Mayor or Regional Council and that **Vacancy** will not be filled for a period exceeding one month, **Council** may appoint one of the Ward Councillors as an alternate member of the Regional Council until the **Vacancy** is permanently filled under the provisions of the **Act** and this policy.

4. By-election Process

The following process shall be followed when a **Vacancy** is to be filled by **By-election**:

4.1 Declaring a Vacancy:

In accordance with Section 262(1) of the **Act**, **Council** shall declare a **Vacancy**:

- a) In the case of the death of a Member of Council, at the one of the next two meetings of Council; or,
- b) In any other case, at its next meeting.

4.2 By-law for calling a By-election

In accordance with Section 263(5) of the **Act**, **Council** shall pass a by-law calling for a by-election within 60 days of declaring a **Vacancy**. To afford the **Clerk** sufficient time to prepare for a **By-election**, a by-law calling for a **By-election** shall be placed on a **Council** agenda:

- c) No earlier than the 50th day after a **Vacancy** is declared in the case of a **Vacancy** in the Office of the Mayor or Regional Councillor; or,
- d) No earlier than the 30th day after a **Vacancy** is declared in the case of a **Vacancy** in the Office of Ward Councillor.

If a **Vacancy** occurs during the summer recess of **Council**, the **Clerk** may reduce the period of time for the placing of a By-law on a Council Agenda provided that the **Clerk** is satisfied that the City is adequately prepared to hold the by-election in accordance with the provisions of the *Municipal Elections Act, 1996*.

4.3 Nomination Day

In accordance with Section 65(4)(1)(i) of the *Municipal Elections Act, 1996*, the **Clerk** shall fix Nomination day to be a day not more than 60 days after the City passes a By-law calling for a by-election.

4.4 Voting Day

In accordance Section 65(4)(3) of the *Municipal Elections Act, 1996*, Voting Day for a **By-election** shall be 45 days after Nomination Day.

5. Appointment Process

In accordance with Section 263(5)(1)(i) of the **Act**, if a **Vacancy** is to be filled by **Appointment** the **Vacancy** shall be filled within 60 days of declaring the **Vacancy**. **Council** shall declare by resolution its preferred **Appointment** process at the meeting where the **Vacancy** is declared or at its next meeting.

The following process shall be observed when filling a **Vacancy** by **Appointment**:

5.1 Vacancy in the office of Mayor

If a **Vacancy** in the office of Mayor is to be filled by **Appointment**, **Council** may choose to fill the

Vacancy by appointing:

- a) a current Member of Council;
- b) an unsuccessful candidate for the same office in the most recent regular election; or,
- c) any other qualified individual.

5.2 Vacancy in the office of Regional Councillor

If a **Vacancy** in the office of Regional Councillor is to be filled by **Appointment**, **Council** may choose to fill the **Vacancy** by appointing:

- a) a current Ward Councillor;
- b) an unsuccessful candidate for the same office in the most recent regular election; or,
- d) any other qualified individual.

5.3 Vacancy in the office of Ward Councillor

If a **Vacancy** in the office of Ward Councillor is to be filled by **Appointment**, **Council** may choose to fill the **Vacancy** by appointing:

- a) an unsuccessful candidate for the same ward in the most recent regular election; or,
- e) any other qualified individual.

5.4 Appointment of current Members of Council to fill a Vacancy

If **Council** chooses to fill a **Vacancy** in accordance with either Sections 6.1(a) or 6.2(a) of this Policy, the **Appointment** process shall generally be in accordance with the "Procedure to Appoint a Member of Council to fill a Vacancy" attached as Appendix "A" to this policy. **Council** may make amendments to this procedure as required and necessary, or as recommended by the **Clerk**.

5.5 Appointment of a previous candidate to fill a Vacancy

If **Council** chooses to fill a **Vacancy** in accordance with either Sections 6.1(b), 6.2(b) or 6.3(a) of this Policy, the **Appointment** process shall generally be in accordance with the "Procedure to Appoint a Previous Candidate to fill a Vacancy" attached as Appendix "B" to this policy. **Council** may make amendments to this procedure as required and necessary, or as recommended by the **Clerk**.

5.6 Appointment of any other qualified individual to fill a Vacancy

If **Council** chooses to fill a **Vacancy** in accordance with either Sections 6.1(c), 6.2(c) or 6.3(b) of this Policy, the **Appointment** process shall generally be in accordance with the "Procedure to Appoint an Eligible Voter to fill a Vacancy" attached as Appendix "C" to this policy. **Council** may make amendments to this procedure as required and necessary, or as recommended by the **Clerk**.

6. Limitations

Nothing in this Policy shall be interpreted as denying Council its authority to do anything permitted or required under the **Act**.



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6. Roles and Responsibilities *(Outline roles and responsibilities of those involved in the implementation of the policy)*

Council is responsible for the enactment and enforcement of this policy as well as complying with the policy.

The **Clerk** is responsible for the administration and interpretation of this policy, including advising **Council** on its application.

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Appendix "A"

Procedure to Appoint a Member of Council to fill a Vacancy

The following procedure will be used when appointing a current Member of Council to fill a **Vacancy**:

A. Definitions:

In this procedure:

"Chair" means the Member of Council presiding at the **Council Appointment Meeting**

"Container" means any box prepared by the **Clerk** to be used in the drawing of the names of individual **Nominees** as required in these procedures.

"Council Appointment Meeting" means the regular or Special Council Meeting where Council will appoint someone to fill a **Vacancy**.

"Slate of Nominees" means a list of all the individual candidates, who have been nominated in accordance with this procedure, for **Appointment** to fill a **Vacancy**, and **"Nominee(s)"** shall mean an individual whose name appears on the **Slate of Nominees**.

B. General

1. The **Appointment** of a current Member of Council to fill a **Vacancy** in any another office on Council shall take place at a regular meeting of Council, or a Special Meeting of Council called for such purposes, within 60 days of declaring a **Vacancy**.
2. Only a Member of Council elected for the term in which the **Appointment** is taking place will be considered eligible for appointment.
3. At the **Council Appointment Meeting**, the **Chair** will advise that Council has declared a seat vacant in accordance with the *Municipal Act, 2001* and resolved to fill the vacancy by **Appointment** of another Member of Council. He will then provide a general overview of how the **Appointment** process will be conducted.

C. Nomination Process

4. A Member of Council does not need to be present at a **Council Appointment Meeting** to be nominated. Any Member of Council that will be absent from a **Council Appointment Meeting** who wishes to be nominated shall submit to the **Clerk**, a minimum of two (2) days prior to the **Council Appointment Meeting**, a signed letter consenting to their nomination. If the letter has not been provided to the **Clerk**, the Member of Council will not be permitted to be nominated. Members of Council absent from the meeting, but duly nominated, will not be permitted to provide written submissions to the meeting,

appoint a representative to speak on their behalf, withdraw their nomination, or participate remotely by any means. The **Clerk** will provide a copy of any letter received to the **Chair** who will read aloud the names.

5. The **Chair** will request that any Member of Council interested in being nominated to indicate their interest by raising his or her hand.
6. The **Chair** will call three times for additional expressions of interest. Hearing none, the **Chair** will request a motion to close the nominations.
7. Once the nominations are closed, the **Chair** will read aloud all the names of the Members of Council who have indicated their interest. The **Chair** will request a motion to adopt the names as a **Slate of Nominees**.
8. **Nominee(s)** will be offered a maximum of five (5) minutes each, with no extension, to speak prior to the first round of voting. The order of speakers will be drawn by the **Clerk** from a box containing the names of all the **Nominees**.

D. Acclamation Procedure

9. If the **Slate of Nominees** includes only one (1) **Nominee**, the **Clerk** will declare that **Nominee** elected and a resolution or by-law will be prepared and submitted to Council for enactment.

E. Voting Procedure

10. If the **Slate of Nominees** includes more than one (1) **Nominee**, rounds of voting will be conducted as follows:
 - a) The **Clerk** will provide Members of Council a voting card on which to indicate their choice of **Nominee** in writing.
 - b) The **Clerk** will read out the names of all the **Nominees** alphabetically by surname.
 - c) Each Member of Council is entitled to vote for one (1) **Nominee** in each round of voting.
 - d) The **Clerk** will ask Members of Council to vote by displaying their voting card with choice of **Nominee** clearly written on it. Members of Council will display the card at the same time and in a manner that is clearly visible to the **Clerk** and public.
 - e) Once a voting card has been displayed by a Member of Council no changes shall be permitted.
 - f) The **Clerk** will record the votes and announce how each Member of Council has voted and the results at the end of each round of voting.
11. If at the end of any round of voting, a **Nominee** receives the votes of more than one-half of the Members of Council present, the **Clerk** will declare the **Nominee** to be elected and a resolution or by-law will be prepared and submitted to Council for enactment.

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12. Rounds of voting shall continue until a **Nominee** has received more than one-half of the votes of the Members of Council present, or until a tie is broken in accordance with section 13(f)(ii) of this procedure.

13. Where a round of voting does not result in a **Nominee** receiving more than one-half of the votes of the Members of Council present:

- a) The **Nominee** with the fewest number of votes will be automatically excluded from the **Slate of Nominees** in the next round of voting.

Example: in a contest with four (4) **Nominees** and 12 Members of Council present, a **Nominee** will need a minimum of 7 votes to be **Appointed**:

Nominee A – 5 votes

Nominee B – 3 votes

Nominee C – 3 votes

Nominee D – 1 vote

In the above scenario, as no majority vote was achieved, Nominee D is eliminated from further voting, and another round of voting will occur.

- b) In any round of voting, one (1) vote shall be considered the lowest number of possible votes. Where **Nominees** receive zero (0) votes, they will be automatically excluded from the **Slate of Nominees** in the next round of voting.
- c) If a tie exists between two or more **Nominees** for the fewest number of votes received, the **Clerk** will draw all but one (1) **Nominee's** name from a container to continue in the subsequent round of voting. The name of the **Nominee** not pulled by the **Clerk** will be excluded from the **Slate of Nominees** in the next round of voting.
- d) The **Clerk** will ask if any **Nominee** present in person wishes to withdraw their name from the **Slate of Nominees** for the next round of voting.
- e) The **Clerk** will conduct another round of voting with a revised **Slate of Nominees** in accordance with Section 10 of the procedure.

Equal Votes for all Nominees

- f) Where after rounds of voting, the votes cast are equal for all the **Nominees** the following procedure will be observed:
- i. If there are three (3) or more **Nominees** remaining, the **Clerk** will draw all but one **Nominee's** name from the **container** to continue in the **Slate of Nominees**. In other words, the nominee not pulled by the Clerk is eliminated from the contest.
 - ii. If only two (2) **Nominees** remain, the **Clerk** will break the tie by pulling the name of the successful **Nominee** from the **container**. The **Nominee** whose name is pulled by the **Clerk**

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will be declared elected and a resolution or by-law will be prepared and submitted to Council for enactment.

General Voting Rules

- g) Each of the pieces of paper used by the **Clerk** to draw the names of **Nominees** in accordance with the requirement of Sections 8, 13(c), or 13(f) of this procedure will be created by the **Clerk** and will be equal in size and type and will contain the name of one **Nominee** only.
- h) Only the **Clerk** or the **Clerk's** designates may handle the pieces of paper or **Container** referenced in this procedure.

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Appendix “B”

Procedure to Appoint a Former Candidate to fill a Vacancy

The following procedure will be followed by Council when appointing a former **Candidate** to fill a **Vacancy**:

A. Definitions:

In this procedure:

“Candidate” means any person who was nominated in the most recent regular municipal election for election to the office that has been declared **Vacant**, provided that the nomination was certified by the **Clerk** in accordance with the *Municipal Elections Act, 1996*, and further provided that they are still qualified under the **Act** or the *Municipal Elections Act, 1996*, to hold the office.

“Chair” means the Member of Council presiding at the **Council Appointment Meeting**

“Council Appointment Meeting” means the regular or Special Council Meeting where Council will appoint someone to fill a **Vacancy**.

B. General

1. Council may decide by resolution to fill a **Vacancy** by **Appointment** of a **Candidate**.
2. To be considered for **Appointment**, a **Candidate** must meet all the requirements to hold the **Vacant** office, and must not otherwise be disqualified from holding that office.
3. It is the **Candidate’s** sole responsibility to meet any deadline or otherwise comply with any requirement established by Council or the **Clerk** as part of the **Appointment** process.

C. Method of Selection of Candidate to fill a Vacancy

4. Council may decide by resolution, on or before the **Council Appointment Meeting**, how the **Appointment** process shall be conducted. Council may:
 - a) Choose to appoint the **Candidate** which received the most number of votes in the previous municipal election; or,
 - b) Any other selection process that Council decides to enact.

D. Notice Process

5. Notice of Council’s decision to appoint a **Candidate** shall be provided as follows:
 - c) Notice of the **Vacancy** shall be posted by the **Clerk** on the City’s website and in local newspaper(s); and,

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- d) Notice will also be provided to the last known address of a **Candidate**.
- 6. The notices will identify Council's intention to appoint an eligible **Candidate** to fill the **Vacancy**, and:
 - a) The eligibility requirements to fill the **Vacancy**,
 - b) Any requirement established by the **Clerk**, including but not limited to:
 - i. Application forms or written expressions of interest;
 - ii. Declarations of eligibility; and.
 - iii. Deadline for submissions, which shall usually be 2 weeks.

E. Review of Applications

- 7. The **Clerk** shall examine all expressions of interest received from **Candidates** by the deadline to ensure the eligibility of the **Candidate**. At a minimum, the Clerk shall ensure that the **Candidate** has:
 - a) complied with any requirement established by Council or the **Clerk**;
 - b) was a certified **Candidate** for the **Vacant** office in the previous regular municipal election; and,
 - c) is eligible under the **Act**, the *Municipal Elections Act, 1996*, or any other legislation, to hold the office that has been declared **Vacant**.
- 8. The **Clerk** will certify a list of all **Candidates** who are eligible for **Appointment**. **Candidates** that do not meet the eligibility requirements will be notified in writing, and their names shall be provided to Council for Information Purposes only.
- 9. The **Clerk** shall provide Council with the certified list of **Candidates** eligible for **Appointment**, prior to the **Council Appointment Meeting** which shall include the **Candidates** name and the number of votes received by the **Candidates** in the previous municipal election.
- 10. The **Clerk** shall provide notice to the certified list of **Candidates** of the date and time for the **Council Appointment Meeting**. **Candidates** are solely responsible for attending any **Council Appointment Meeting** which will not be re-scheduled due to a **Candidate's** conflict.

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Appendix “C”
Procedure to Appoint an Eligible Voter to fill a Vacancy

The following procedure will be followed by Council when appointing an **Eligible Voter** to fill a **Vacancy**:

A. Definitions:

In this procedure:

“Candidate” means an **Eligible Voter** who has submitted an application for appointment to the **Clerk**, in accordance with this procedure, and who has been certified as a **Candidate** by the **Clerk**.

“Chair” means the Member of Council presiding at the **Council Appointment Meeting**

“Container” means any box prepared by the **Clerk** to be used in the drawing of the names of individual **Nominees** as required in these procedures.

“Council Appointment Meeting” means the regular or Special Council Meeting where Council will appoint someone to fill a **Vacancy**.

“Eligible Voter” means a person who is a qualified elector in accordance with the *Municipal Elections Act, 1996*.

“Slate of Candidates” means a list of all the individual **Candidates**.

“Slate of Nominees” means a list of all the individual **Candidates** who have been nominated in accordance with this procedure, and **“Nominee(s)”** shall mean an individual whose name appears on the **Slate of Nominees**.

B. General

1. Council is required to declare a seat vacant in accordance with the **Act** and resolve to fill the **vacancy** by appointment of an **Eligible Voter**. Council will fix the date of a meeting when this decision will be made.
2. To be considered for **Appointment**, all **Eligible Voters** must meet all the requirements to hold the **Vacant** office, and must not otherwise be disqualified from holding that office.
3. It is the **Eligible Voters** sole responsibility to meet any deadline or otherwise comply with any requirement established by Council or the **Clerk** as part of the **Appointment** process.

C. Notice Process

4. Notice of Council’s decision to appoint a **Eligible Voter** shall be provided as follows:



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- a) Notice of the **Vacancy** shall be posted by the **Clerk** on the City's website and in local newspaper(s); and,
 - b) Notice will also be provided to all ratepayer and community organizations registered with the **Clerk** (effective the date Council declares the seat vacant).
5. The notices will identify:
- a) The eligibility requirements to fill the **Vacancy**; and,
 - b) Any application requirements established by the **Clerk**, including but not limited to:
 - iv. Consent of Nominee Form or written expressions of interest;
 - v. Statement of Qualification Form;
 - vi. Declarations of eligibility; and.
 - vii. Deadline for submissions, which shall usually be 2 weeks.
6. An Information Meeting may be organized by the **Clerk** during the application period.

D. Application & Review Process:

7. All interested **Eligible Voters** must complete the application requirements established by the **Clerk**.
8. Following the deadline for the submission of an application the **Clerk** will certify the eligible **Candidates**.
9. The **Clerk** shall provide notice to the certified list of **Candidates** of the date and time for the **Council Appointment Meeting**. **Candidates** are solely responsible for attending any **Council Appointment Meeting** which will not be re-scheduled due to a **Candidate's** conflict.
10. Any Council agenda documentation related to **Candidates** will be published in alphabetical order by surname.

E. Nomination Procedure:

11. At the **Council Appointment Meeting**, the **Chair** will outline the following:
 - a) Council has declared a seat vacant in accordance with the **Act** and resolved to fill the **Vacancy** by appointment of an eligible voter; and,
 - b) A general overview of how the appointment process will be conducted.
12. The **Clerk** will read out the names of all the individuals certified to be eligible for nomination (alphabetically by surname). These names constitute the official **Slate of Candidates** eligible for nomination.



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13. Each of the **Candidates** on the **Slate of Candidates** will be offered five minutes each to speak prior to the first round of voting. The order of speakers will be drawn by the **Clerk**.
14. The **Clerk** will call for nominations, subject to the following:
 - a) Only Members of Council may nominate an individual **Candidate** from the **Slate of Candidates**.
 - b) Each Member of Council may nominate one or more **Candidate(s)**.
 - c) Nominations must be done via formal resolution (i.e. a mover and seconder is required).
 - d) **Candidates** do not need to be present to be nominated, however, **Candidates** not in attendance in person will not be permitted to provide written submissions, appoint a representative to speak on their behalf, withdraw their nomination or participate remotely by any means.
15. The **Clerk** will call three times for further nominations, hearing none the **Clerk** will declare nominations to be closed.
16. The **Candidate(s)** nominated by Members of Council in accordance with this procedure shall be the **Slate of Nominees**.

F. Acclamation Procedure

17. If the **Slate of Nominees** includes only one (1) **Nominee**, the **Clerk** will declare that **Nominee** elected and a resolution or by-law will be prepared and submitted to Council for enactment.

G. Voting Procedure:

18. If the **Slate of Nominees** includes more than one (1) **Nominee**, rounds of voting will be conducted as follows:
 - a) In accordance with Section 244 of the **Act**, no vote shall be taken by ballot or by any other method of secret voting.
 - b) Pieces of paper with each of the nominees' names will be created by the **Clerk** and placed in a **Container** provided by the **Clerk**. Each of these pieces of paper will be equal in size and type and will contain the name of one nominee only.
 - c) The **Clerk** will draw the name of nominees to be voted on by Council.
 - d) Council will vote on each **Nominee** drawn by the **Clerk** at the same time by way of public vote, by show of hands.
 - e) Each Member of Council may vote for one (1) candidate only in each round.
19. Rounds of voting shall continue until a **Nominee** has received more than one-half (1/2) of the votes of the Members of Council present, or until a tie is broken in accordance with section 21(e) of this procedure.

20. Where a round of voting does not result in a **Nominee** receiving more than one-half (1/2) of the votes of the Members of Council present:

- a) In any round of voting, one (1) vote shall be considered the lowest number of possible votes. Where **Nominees** receive zero (0) votes, they will be automatically excluded from the **Slate of Nominees** in the next round of voting.
- b) The **Nominees** with the fewest number of votes will be automatically excluded from the **Slate of Nominees** in the next round of voting.

Example: in a contest with four (4) **Nominees** and 12 Members of Council present, a **Nominee** will need a minimum of 7 votes to be **Appointed**:

Nominee A – 5 votes

Nominee B – 3 votes

Nominee C – 3 votes

Nominee D – 1 vote

In the above scenario, as no majority vote was achieved, Nominee D is eliminated from further voting, and another round of voting will occur.

- c) The **Clerk** will record the votes and announce the results verbally at the end of each round of voting.
- d) The **Clerk** will ask if any **Nominees** present in person wishes to withdraw their name from the contest after each round of voting.

Equal Votes for all Nominees

- e) Where the votes cast are equal for all the **Nominees**:
 - i. If there are three or more **Nominees** remaining, the **Clerk** will draw the name of one **Nominee** to be excluded from the subsequent voting. In other words, the names not pulled by the Clerk continue to be eligible nominees.
 - ii. If only two (2) **Nominees** remain, the **Clerk** will break the tie by pulling the name of the unsuccessful nominee. In other words, the name remaining in the container is the **Nominee** to be declared elected by the Clerk.

General Voting Rules

- f) Each of the pieces of paper used by the **Clerk** to draw the names of **Nominees** in accordance with the requirement of Sections 20(e) of this procedure will be created by the **Clerk** and will be equal in size and type and will contain the name of one **Nominee** only.
- g) Only the **Clerk** or the **Clerk's** designates may handle the pieces of paper or **Container** referenced in this procedure.